

Monroe County

**Response to Officers and Members of the 2004
Fall Term Grand Jury**

By

Monroe County Board of County Commissioners

April 30, 2005

Response to Officers and Members of the 2004 Fall Term Grand Jury

This report is provided in response to the request by the Grand Jury found in Recommendation #1, which requested a detailed response to the Grand Jury report's Findings and Observations.

The format of the report follows that of the Grand Jury report. Excerpts of the Grand Jury report are shown in regular text. Responses to the report are in *italic* text.

Additional information was added between excerpts of the Grand Jury report to provide detailed information to the reader.

This document represents the view of the majority opinion of the present members of the Monroe County Board of County Commission.

Referenced Documents:

Utility Agreement between Monroe County and KW Resort Utilities Corp. dated August 16, 2001

Contract for Capacity Reservation and Infrastructure dated July 31, 2002

Amendment Number One to KW Resort Utilities Corp. Contract dated September 10, 2003

FINDING #1 - The “Capacity Reservation and Infrastructure Contract” Section C entitled “Payments to the Utility” states in part, “The County Engineer must review the Invoice and within 5 business days, inspect the work completed and materials delivered and inform the Utility in writing of any error or omission in the invoice and what must be done to correct the deficiency. If the invoice is satisfactory, he shall forward the invoice to the County Clerk for payment”.

Contrary to the requirements of the contract the County Engineer, David Koppel (or designee), did not perform the required physical inspections of completed work activities and materials delivered to the job prior to approval of invoices for payment. The finding is based upon testimony of Mr. Koppel to the State Attorney’s office and other witnesses who appeared before the Grand Jury.

Response to Finding #1

Engineering inspectors, working on concurrent County paving projects within Stock Island, inspected the SI wastewater installation job site on 75% of the days during which the improvements were constructed. These engineering inspectors reviewed the materials delivered and inspected the work on a routine basis and made digital photographic records of such inspections when necessary. These employees were delegated the inspection and other field responsibilities whereas the County Engineer handled the administrative aspects of the project.

The inspections and the materials used in the construction were judged to be in conformance with the design documents and common construction practices. The documents used to perform inspections and determine material conformance were the plan documents referenced in the Capacity Reservation and Infrastructure Contract of July 31, 2002. The plan documents dated May 30, 2002 were the controlling documents for the project.

Additionally, Weiler Engineering Corporation and its inspecting engineer performed daily reviews of all work and incorporated materials and provided a detailed daily inspection report to the project owner as well as the County Engineer. The inspection reports were also provided to the County to substantiate and certify, by the design engineer all requests for payment.

The subsequent review and evaluation of the installed system by the County's consultant, URS revealed that the installed system was appropriate for the intended use, was installed in accordance with the design documents dated May 30, 2002, and was consistent with what the County had contracted for.

The readers of this document should be reminded that the infrastructure being installed was the property of the Utility and not Monroe County. The procedures used by the Engineering Department are consistent with industry standards and are no different than procedures used by other counties and municipalities when the government is not the owner of the infrastructure being installed.

To provide greater oversight and accountability the Engineering Department has been expanded to the Engineering Division, reporting directly to the County Administrator, in lieu of being a department within the Public Works Division. Staff with specific expertise have been and will continue to be recruited to more effectively address issues and provide greater contract oversight.

Additionally, the County Administrator has initiated a strategic planning process for county-wide operations. The plans are in the process of being written at this time with an estimated completion date of November 2005. One expected result of the strategic planning process will be clarity in the core responsibilities of County Divisions which will improve the outcomes and efficiencies of the County government.

FINDING # 2 -- The “Capacity Reservation and Infrastructure Contract” Section D states in part, “The Utility warrants that it has not employed, retained or otherwise had act on its’ behalf any former County officer or employee. For breach or violation of this provision the County may in its discretion, terminate this contract without liability and may also in its discretion, deduct from the contract or purchase price, or otherwise recover, the full amount of any fee commission, percentage, gift, or consideration paid to the former County officer or employee”. Monroe County Ordinance 10-1990, Section 2-528 states additional requirements in this regard.

Contrary to the requirement of county ordinances and the contract, Mr. John L. London, former Monroe County Commissioner, received checks from the Main Contractor KW Resort Utilities totaling \$147,500.00. The State Attorney’s investigation found that Mr. London received monthly checks in the amount of \$2,500.00 from the period of November 1998 until October 2003.

Response to Finding #2

Section “D” of the contract does not contain the contract language as stated in the Grand Jury report. Section “9, page 4” of the “Capacity Reservation and Infrastructure Contract” does reflect the language shown above.

The Grand Jury report states that, “This finding identifies the County Commissions’ failure to recover the \$147,500...” The County Commission has not failed to recover these monies. Until the release of the Grand Jury report, neither the County Commission nor County staff was aware that Mr. London was receiving payments from KWRU related to the South Stock Island project.

Mr. John L. London’s term on the Monroe County Commission expired in October 1998.

The contract between KWRU and Monroe County was signed on July 31, 2002; three years and nine months after Mr. London departed Commission office. If the County Commission elected to seek repayment of these monies, the amount of money paid that would violate the contract would be substantially less, approximately \$60,000, (\$2500 x 24 months) than the amount submitted by the Grand Jury.

The restriction against lobbying by a former elected officer involving their prior elected office expires two years after departing office. Additionally, Mr. London was initially engaged as a consultant for KW in regard to matters unrelated to this project as reported by the Utility.

The contract clearly states that taking action against a person who violates this provision is at the Commission's discretion. Further, the Grand Jury's assertion that all monies received by Mr. London on behalf of KWRU was a direct result of activities related to this contract has not been proven to this body.

The County Commission would like to remind the lay reader that the payments from KW to Mr. London were found with the use of a subpoena for employment and payment records by the State Attorney. The records produced by the Utility were for an entity named KW Utilities as stated in the investigative report. While the County had authority under the "Capacity Reservation and Infrastructure Contract" to audit the books of KW Resort Utility Co., it had no contractual rights to see the business dealings of this other entity, KW Utilities, therefore the County Commission, County Clerk nor County staff had knowledge of these payments to Mr. London. Until the issuance of the Grand Jury report, the County Commission and staff had no information that the contract had been violated or any other information that would have initiated an investigation by any party.

The decision to recover or not to recover the funds holds no future bearing on the contractual relationships with other vendors and contractors doing business with

the County. “Pay officials without punishment” as stated in the Grand Jury report never occurred in the context of the performance of this contract. Mr. London was not an “official” of the County when payments were received by him, starting in November of 1998 per the investigative report. His official duties with the County ended in October of 1998, approximately one month prior to receipt of the first payment.

It would be an illegal act for an elected official to receive a payment for the performance of their official duties except those monies paid to them by the County. The Board of County Commissioners is disturbed that the Grand Jury would insinuate such actions have occurred or may in the future and that it could become an accepted way of doing business for the County.

The State Attorney’s investigative report concluded in part...”there was complicity in the breach of the contract and ordinances on the part of individual county commissioners in that they allowed themselves to be influenced by John L. London in the implementation of this contract”

Any suggestion of complicity by the State Attorney or the Grand Jury is incongruous with the facts. See the response above for clarification as to the role of Mr. London and the Board of County Commissioner’s knowledge of these activities during the commencement of the KWRU contract

Complicity according to Webster’s Collegiate Dictionary, 10th Edition is defined as; “association or participation in or as if in a wrongful act”.

To say that there was complicity in the breach of contract or ordinance is not sustained by the facts and as explained in the above response concerning the payments to Mr. London. There was no complicity in the breach of the contract as the only portion of the contract with any possible connection to Mr. London involves payments for lobbying. For a Commissioner to “allow themselves to be

influenced by John London” is neither illegal, immoral nor a breach of contract or ordinance. The ordinance requires compliance by those in a position to actually perform lobbying services, which would be the past elected official, not with presently seated elected officials.

County Commissioners may or may not be influenced by a lobbyist, be aware of the contractual relationship of a lobbyist or be aware of the intentions of a lobbyist.

FINDING # 3 - The Grand Jury has found that the County Commission and other government officials were negligent in their failure to evaluate and assess potential financial burden being placed on some property owners being served by the new vacuum sewer system- The Grand Jury concluded that the County did not do its’ home work in this regard prior to rushing into an agreement with the Utility. The County’s Engineering Consultant, URS Corporation, filed a report dated November 22, 2004 entitled, “Engineering Report Wastewater Collection System Evaluation, South Stock Island”. The report was filed, after completion of the contract. The report concluded in part that there could be an excessive financial burden on large property owners as a result of three possible components. These components included:

1. Connection Fees - The KW Resort Utilities wastewater tariff, as approved by the Florida Public Utilities Commission, assesses a one-time connection fee in the amount of \$2,700 per ERC, where an ERC is defined a one single family residential service connection.

The fee is considered reasonable for an individual property owner.

The Commission agrees with the Grand Jury finding that the Florida Public Service Commission’s regulated one-time connection fee of \$2,700 per EDU (equivalent dwelling unit) is reasonable. EDU’s also include mobile homes, individually metered apartments, and house boats with apartments.

However, where multiple unit properties, such as mobile home parks or small businesses are concerned, the connection fees are proportionate to the total number of units (houses, trailers etc.) on each property. For example, a larger property containing 100 low income mobile home rentals, the legal owner would be assessed a connection fee of \$270,000.

The Commission does not agree with the Grand Jury finding to offer lower connection fees to large property owners. Such a practice would place a burden on all of the other users of the system creating an inequitable, if not, establishing a discriminatory wastewater pricing policy. The cost per property for the connection fee is determined by the amount of water presently being used by the property. One EDU is equivalent to a daily flow of 250 gallons per day of water usage for Stock Island. The cost to connect one EDU in Stock Island is \$2700. The same connection fee is presently being used in the Bay Point area by the Florida Keys Aqueduct Authority (FKAA), however, the connection charge is calculated using a daily flow of 167 gallon per day, effectively increasing the cost for property owners who will have to pay for more than one EDU.

Other wastewater projects within the County have charged connection fees in excess of \$2700. Research has shown that many communities throughout the southeast United States have charged connection fees to facilitate wastewater plant and infrastructure construction with the costs to the end user in excess of \$2700.

The preferred method for funding these types of projects is the use of the special assessment method of collection. With this method the entire cost of each connection is assessed to the property. Using this method, vacant, undeveloped with the potential to be developed, properties are also assessed a connection fee. The payments to principle and interest are financed over a 20 to 25 year period. The cost assessed to each property per EDU using this method would be approximately \$11,000 to \$15,000 per EDU.

Large property owners on Stock Island have experienced up to a doubling of their property market value since the signing of the July 2002 contract to sewer Stock Island. Based on current market values, a 100 unit trailer park can be sold for up to \$40 million.

A \$270,000 connection fee is seven-tenths of one percent (00.7%) of the market value of a 100 unit trailer park on Stock Island.

Many of the Stock Island trailer parks have been under the same ownership for years and have large equity values, the availability of low interest rates and the millions of dollars of equity make it reasonable for large property owners to connect to an environmentally preferred wastewater system and the fact that it is necessary to comply with the State mandate to disconnect from a system that will become unlawful in 2010.

All Monroe County properties, if not connected to an effective wastewater system by 2010, will inevitably be mandated by the State to install and connect to onsite systems that meet required water treatment standards. The costs for the installation of such systems will exceed the per EDU cost for the project in question.

For those large property owners who may still have difficulty in funding a wastewater connection, the Monroe County Housing Authority has been proactive in soliciting low income property owners to apply for hundreds of thousands of dollars of SHIP Grant funding assistance that is available.

In addition, there is low income Community Development Block Grants that pay up to 90% of a landlord's expense through the tenant's qualification.

The County also offered low interest 20-year financing for all impacted property owners connecting to the new vacuum wastewater system. Unfortunately, only 10% of the property owners elected to take advantage of this offer.

The report further concluded that the owner could potentially collect connection fees from individual, residents of the units. However, concerns such as low-income levels of residents to pay connection related fees, vacancy of multiple units and insufficient capital availability of the property owner could lead to unacceptable financial burdens for both the property owner and low-income renters.

The cost of implementing a wastewater system in Monroe County has been of great concern to the County Commission for many years. To say that the Commission hasn't wrestled with the burden of funding wastewater projects exhaustively is inaccurate. The County Commission considers the issue of wastewater funding to be an unfunded mandate directed by the State of Florida.

The County has spent considerable time and effort to seek appropriate funding from both the State of Florida and the Federal Government. While some funding has made its way to the County and the Cities within the County, the funding has been inadequate to address a more cost effective solution. Many of the elected officials that represent the County and the State agree that the issue is one of national scale and should receive such attention, their requests for funding are often met with the objection that wastewater is a local issue and therefore should be provided for on a local basis. Further inaction waiting for State and Federal funding sources only ensures one thing, the reality that all the costs related to this type of project continue to increase and therefore each day we delay in dealing with the issue on a local basis costs residents of the County more money.

The concern of pass through costs by large property owners to low income rental residents is addressed in the previous statement concerning the availability of

financial assistance from the Monroe County Housing Authority and the other funding sources listed above.

Also, the Commission would like to clarify that pass through of costs is something beyond the control of the County and is an individual property owner rights issue. Such pass through costs are currently taking place in the Marathon Little Venice wastewater project – where the FKAA is charging rental residents for the property owners' wastewater costs and has occurred each and every time there is a tax increase, special assessment or other fee levied on owners of investment properties.

The Grand Jury's propensity to delve into this subject matter can only be seen as an attempt to be inflammatory or is a direct reflection of the naivety of the Grand Jury members. To frame an argument that there would be something wrong with a landlord recouping appropriate operating expenses or that this is an area where the County should intervene is unrealistic at best.

If the property in question was a condominium would all shareholders of the property be obligated to pay their fair share of costs? The County Commission submits the answer would be yes. The same would apply, at a minimum, to manufactured home lot tenants, owners of apartment units and other rentals, and boat slip owners.

2. On-Site Construction Costs - The burden of upgrading on-site systems or installing new systems compatible with the Utilities vacuum system currently falls on the property owner.

On-site construction costs to connect to, or upgrade a private property sewer system are considered personal property improvement. Use of public dollars to accomplish this task has been deemed unlawful by the County Attorney in accordance with state court rulings.

It is accepted industry practice that property owners should bear the expense of preparing and installing wastewater system components on private property to connect to a central wastewater collection system.

Monroe County and KWRU wastewater connection requirements pursuant to the Florida State Statute:

Single Family Residence & Existing Commercial Property under 1,000 gallon daily flows: the property owner is obligated to run a gravity feed line from their home to the gravity sewer stub out connection provided at their property line.

Existing Commercial Property over 1,000 gallon daily flows; the property owner is obligated to run a compatible system line or lines to the property line where the wastewater connection has been made available by the utility company.

Interviews of property owners and the URS Report found that these additional costs have ranged from \$10,000 to the low \$100,000s. To facilitate this construction, the property owners also face additional costs including engineering design, surveys and testing services-

Cost for large property owners' on Stock Island to connect to the new wastewater system are proportionate and in line with expenses for the same work being incurred throughout the County and the South Florida region.

Onsite construction costs and related expenses are the responsibility of the property owner. The County has offered the opportunity to finance these costs, unfortunately only 10% of the effected property owners chose to use this option.

Referring to a previous cost to property value example:

Large property owners on Stock Island have experienced up to doubling of their property market values since the signing of the July 2002 contract to sewer Stock Island. Based on current market values, a 100 unit trailer park can be sold for \$40 million.

The connection to a central wastewater system significantly further increases Stock Island property values making them re-developable.

Also, it was noted the KW Resort Utility was assessing additional “inspection fees” on the property owner before the on-site collection systems can connect to the central sewer system.

It is customary and provided for by the Florida Public Service Commission for the Utility to charge an “inspection fee” to perform a compatible engineering analysis of systems to be installed by a private contractor and inspection of the installation prior to connecting to a central wastewater system. This is industry practice and reduces risk of raw sewage seepage into the environment.

3. Decommissioning Costs - Large property owners would also be responsible for costs involved in the decommissioning and cleanup of existing treatment plants and septic tanks on their Property.

It is standard industry practice that individual property owners pay for the costs involved to decommission and remove environment hazards from their property. It is unlawful for the County tax revenues to be used for such private property improvements. Costs associated with this task cannot be avoided. If the property is not in compliance with required wastewater treatment levels by 2010, the costs for decommissioning will still be required to be absorbed by individual property owners when their new system, either a central sewer system or onsite aerobic system are approved for service.

As previously stated: The costs to upgrade or improve a private property owner's sewer system is considered an individual property improvement: for the County to pay personal property improvements with taxpayer dollars has been deemed unlawful by the County Attorney. It should also be noted that the decommissioning cost per residential unit in the trailer parks will typically be less than that of an individual residential property owner.

The Florida State Department of Health and the State Department of Environmental Protection require property owners to decommission and cleanup cesspits and other unlawful wastewater containers on private property.

The URS Report concluded that the combined costs associated with the above requirements could potentially result in a substantial burden to some of the larger companies. Several property owners have indicated to the Grand Jury that if forced to shoulder the full financial burden they may have to sell their property. Many of these properties are currently sites for low-income housing.

Some important facts concerning multi-unit properties on Stock Island:

- A. Financial assistance is available and has been offered by the County.*
- B. Costs are proportionate to property owners' real estate market value and the revenues realized to continue the present use. They are also proportionate to, and in many cases, significantly lower than an individual homeowner's costs on a per-dwelling basis.*
- C. Many trailer park property owners have enjoyed premium rental incomes for years and a doubling or tripling of their property values. The expense to connect to a sewer system is a minor percent of the property's increased market value.*
- D. Large multi-unit property values significantly increase when connected to a central wastewater system.*
- E. There are a notable number of Stock Island trailer parks that have and are being negotiated for sale at significantly elevated real estate values.*

- F. New developments are required to connect to the central wastewater system.*
- G. Many multi-unit property owners are attempting to seize the opportunity of the windfall in property values and therefore are desirous to delay the wastewater system connection costs in order to pass these costs to the new developer.*

FINDING # 4 - The County Commission's process for the review and approval of the sewer project plans, drawings and contract appear to be flawed. Based upon review of the URS Report and the Grand Jury Consultant, Boyle Engineering's Report it was continued that a set of drawings (date stamped 5/21/02) was submitted to the County for review late in the design phase. These plans were substantially different from the plans that were previously submitted for project permitting and later for contractor bidding and construction. These plans were provided to the County by the Utility during a meeting in the County Administrators office on or about May 24, 2002. Mr. Kenneth Williams of the CH2M HILL was also in attendance at the meeting. CH2M HILL has been Monroe County's wastewater consultant since 1996. During this meeting Mr. Doug Carter of the Utility presented the plans noted above dated 5/21/02. Mr. Williams was presented a set of these plans for review. Mr. Williams completed his review and provided his comments in a letter dated, July 5, 2002 to the Monroe County Director of Growth Management, Tim McGarry. In the letter, Mr. Williams outlined several concerns with four properties on Stock Island including Leo's Campground, Stock Island Trailer Park, Overseas Trailer Park and Coral Hammocks. The letter noted that the plans called for each of these properties to install internal vacuum systems. Mr. Williams's letter questioned who would be responsible for the cost of installing this equipment and noted that the bid proposal did not include pricing for buffer tanks. It was further noted that there were other smaller trailer parks, some housing areas, and other areas that do not have vacuum sewer facilities adjacent to the properties for easy connection to the new vacuum sewer system. Mr. William's letter asked how will these areas be connected. The letter documented eight specific comments and concerns with the plans.

During interviews by the State Attorney's Office, Mr. Williams stated that he was

assured by County Officials that his letter was included in a package of backup materials given to the County Commissioners for review prior to their next meeting. Mr. Williams noted that he was not contacted by any member of the County Commission regarding his comments and concerns.

A meeting of the Board of County Commissioners was convened, on July 17, 2002. A video tape of the meeting was reviewed and analyzed by the State Attorney's office, in this meeting the County Administrator, James Roberts, requested and received "conceptual" approval of the project plan by the County Commission. The Commission also agreed to issue a contract for \$4.606 million dollars to KW Resort Utilities. There was no review or approval of the plans at this meeting. There also was no discussion of the letter from CH2M HILL Engineer Kenneth Williams regarding the plans of 5/21/02.

A special meeting of the County Commission was called for July 31, 2002. The only agenda item was the approval of the contract with KW Resort Utilities for construction, of the Stock Island wastewater infrastructure. The Project Plans and Contract were presented to the Commission for approval by the County Administrator, James Roberts. Mr. Roberts noted to the Commissioners that the plans they were approving were the same as those previously submitted (date stamped May 21, 2002), however the date had been changed to May 30, 2002. This presentation by the County Administrator was false. The URS Report states that, in fact, the May 21, 2002 plans previously submitted to the Commissioners, numerous buffer tanks were depicted on the plan-and-profile sheets at various locations along the vacuum headers (total of 29 buffer tanks and 14 dual buffer tanks). In contrast, the set of plans dated May 30, 2002 submitted at this special meeting depicted only 15 single buffer tanks and no dual buffer tanks. The contract and plans were approved at this meeting without adequate review, resolution of open comments, review of final design plans and most importantly the impact these changes might make on the citizens of Stock Island.

It is irrefutable that the plans approved by the County Commission on July 31, 2002 were presented to the County by Jeff Weiler on June 11, 2002.

It must also be repeated that the County did not purchase wastewater infrastructure. The County loaned the Utility money, on behalf of the residents, to provide sewer infrastructure connections throughout South Stock Island by purchasing plant capacity. The level of plan review is irrelevant, as the County was not permitting a system, merely approving a contract wherein the Utility was proposing to install up to \$4.6 million dollars of WW infrastructure on a reimbursement basis. As the WW connections occur, the County would be repaid the monies invested in the project except for the amount paid to the Utility to meet Advanced Water Treatment standards.

It has been stated that the May 21, 2002 design development documents differed significantly from the permitting and bid sets. As can be seen from the comparative analysis presented below, in most instances, the May 21st documents are nearly identical to all other design documents. Only on the Plan and Profile sheets are any substantial differences found. A copy of the master mainline sheet from the May 21, 2002 plans examined by CH2M Hill is attached. This is a photocopy provided by Mr. Williams.

COMPARATIVE ANALYSIS

<u>May 21, 2002 Documents</u>	<u>Item Reviewed</u>	<u>May 30, 2002 Bid Set</u>
<u>17 Buffer Tanks</u>	<u>Bid Form Schedule (from Bid Documents binder)</u>	<u>19 Buffer Tanks</u>
<u>15 Buffer Tanks and 17 Vacuum Stubs (to trailer parks)</u>	<u>Pit Index (from drawings)</u>	<u>15 Buffer Tanks and 17 Vacuum Stubs (to trailer parks)</u>
<u>15 Buffer Tanks and 16 Vacuum Stubs (to trailer parks)</u>	<u>Master Mainline Sheet</u>	<u>15 Buffer Tanks and 16 Vacuum Stubs (to trailer parks)</u>
<u>14 Buffer Tanks and 16 Vacuum Stubs (to trailer parks)</u>	<u>Mainline Plan Sheets</u>	<u>14 Buffer Tanks and 16 Vacuum Stubs (to trailer parks)</u>

<u>parks)</u>		<u>parks)</u>
<u>35 Single Buffer Tanks, 14 Dual Buffer Tanks and 2 Vacuum Stubs</u>	<u>Plan & Profile Sheets</u>	<u>14 Single Buffer Tanks, No Dual Buffer Tanks and 16 Vacuum Stubs</u>
<u>Not designated as Bid Set</u>	<u>Designation as Bid Set on Bid Documents binder</u>	<u>Designated as Bid Set, stamped in red ink on cover</u>
<u>Not designated as Bid Set, but also not designated as Preliminary or Draft</u>	<u>Designation as Bid Set on Drawings</u>	<u>Designated as Bid Set, stamped in red ink on cover sheet</u>
<u>Reduced size, 11" X 17"</u>	<u>Size of Documents</u>	<u>Full size, 24" X 36"</u>
<u>Not signed</u>	<u>Signature of Engineer</u>	<u>Signed, dated and sealed by the Engineer</u>
1. <u>Revised per DEP</u> 2. <u>Revised for Construction</u>	<u>Comments in Revision</u> <u>Blocks</u>	1. <u>Revised per DEP</u> 2. <u>Revised for Construction</u> 3. <u>Revised Tank Sizes</u>

The May 21st drawings and contract documents were substantially identical to the May 30th drawings and contract documents in all respects with the exception of the Plan & Profile sheets. The Master Mainline sheet shows the entire project and clearly shows vacuum stubs as the intended means of connection for the trailer parks in question. This is clearly shown in all sets of drawings. The Pit Index and the Bid Form Schedule both clearly show a limited number of buffer tanks. Only the Plan & Profile sheets in the May 21st drawings show anything different than what was designed, permitted, bid and built. In every other respect, the May 21st documents agree with all other sets.

The May 21st drawings were put together to investigate a "what if" scenario and were never intended to represent the final form of the project. They were only produced in reduced size and were not signed and sealed, or stamped Bid Set, or in any other way designated as an official set. Looking at the May 21st drawings, it is obvious that these plans could not be used for bidding or construction purposes since the quantities and

types of tanks required for the project can't be determined. A contractor would ask the question "Do I bid on the quantities listed in the Pit Index and shown on the Mainline sheets, or do I bid on the quantities shown on the Plan & Profile sheets?"

The Draft Contract with the Utility referred to plans dated May 16, 2002, yet the plans in controversy are actually dated May 21, 2002. Copies of the FDEP submittals were provided to the County Engineering Department in March, 2002 and the BID SET plans dated May 30, 2002 were provided to the County Engineering Department on June 11, 2002 and reviewed by the County Engineer with the consultant, Weiler Engineering. On June 11, 2002 at the Pre-Bid Meeting for the project, interested parties, including the County Engineer, were directed to make sure they were using the May 30, 2002 plans.

It is unfortunate that neither Weiler Engineering nor the County Engineer were informed that the County's Consultant, CH2M Hill, was reviewing the May 21 documents as the Consultant would have been informed that they were for design development and not the correct plans. In fact, it is surprising that the inconsistencies throughout the May 21 plans were not identified by the County's consultants if the plans were being considered as construction and/or contract plans.

Mr. Williams never asked Weiler or the Utility to comment on his concerns.

The Grand Jury has concluded that it appears that the County Commission and responsible county officials did not have adequate control of this process. The Commission never did address the CH2M HILL comments nor does it appear that they reviewed the new plans prior to approval of the contract. Their failure to control this process may have also contributed to the financial burdens now being experienced by the citizens of Stock Island.

It would not be the role of the County Commission to "review" plans nor address comments submitted by consultants. Utility plans are not the most understandable documents, especially for persons that do not have experience in

interpreting same. The County Commission would rely on technical staff to perform these services.

The Stock Island wastewater project is the lowest cost project to date in the Monroe County per EDU.

In reference to the Grand Jury's allegation that, "the impact these changes might make on the citizens of Stock Island" the Commission repeats a previous reply to this alleged concern:

Some important facts concerning properties on Stock Island:

- A. Financial assistance is available and has been offered by the County.*
- B. Costs are proportionate to property owners' real estate market value.*
- C. Many trailer park property owners have enjoyed premium rental incomes for years and a doubling or tripling of their property values. The expense to connect to a sewer system is a minor percent of the property's increased market value.*
- D. Large multi-unit property values significantly increase when connected to a central wastewater system.*
- E. There are a notable number of Stock Island trailer parks that have and are being negotiated for sale at the significantly elevated real estate values.*
- F. New developments are required to connect to the central wastewater system.*
- G. Many multi-unit property owners are attempting to seize the opportunity of the windfall property values and therefore are desirous to delay the wastewater system connection costs in order to pass these costs to the new developer.*

Examples:

Overseas Trailer Park

WatersEdge Trailer Park

- H. The project has significantly added to the already enhanced property values on Stock Island.*

FINDING #5 - Upon completion of construction of the Stock Island wastewater infrastructure, Monroe County has agreed under the terms of the contract to relinquish ownership of this infrastructure to the KW Resort Utility. The sewer project was funded 100% (\$4.606 million dollars) by Monroe County tax dollar.

Pursuant to the contract, the County purchased sewage capacity, not pipes, tanks or related infrastructure. The County's expenditure for capacity reservation will be fully reimbursed by the payment of connection fees collected by KWRU. The contract for "Capacity Reservation and Infrastructure" does not relinquish ownership of the infrastructure to KWRU.

*In fact, the contract dated July 31, 2002, section 1 (F) clearly states "**The South Stock Island wastewater collection infrastructure constructed pursuant to this contract is, and will remain, the sole property of the Utility**". The County Commission can only wonder why the Grand Jury did not have the appropriate documentation available upon which to make such judgments. As a government organization, the County strives to maintain a level of public trust. The County Commission expects members of the Grand Jury to take their responsibilities seriously when making public the results of their "investigative report". How could such an inaccuracy be reported?*

The County has invested a total of \$3.9 million of the budgeted \$4.6 million to connect 1,500 EDU's on Stock Island. KWRU has returned \$442,580 to the County and the County has received \$605,850 from its' Consent and Acknowledge Agreements Program; a combined total of \$1,050,430 or 27% of the County's funds have already been returned of the total \$3,886,674 that were used to purchase the 1,500 EDU plant capacity.

The remaining balance of the KWRU Stock Island wastewater collection system connection fees to be collected; \$2,836,244 will be returned to the County per the terms of the contract as detailed below. The rate of reimbursement is dependent on the county's enforcement of connection to the system. Unfortunately, the media and political confrontation over the project stalled connection enforcement efforts by the County. Presently, connections are occurring at a pace that will provide for timely reimbursement of all funds advanced by the County.

KWRU has guaranteed and continues to guarantee system capacity and will, if ever necessary in the future, make the necessary investments to increase system capacity and maintain compliance with the contract documents.

The existing system's capability to handle the contracted EDU's has been verified and attested to by URS, Weiler Engineering and the State Department of Environmental Protection.

The tax dollars used to purchase the plant capacity (\$3.9 million) are being returned to the County through the agreed terms of the contract. The refund mechanism is the \$2,700 fee charged for each connection. The County receives \$2,100 directly from each connection. The \$600 balance is put into an Advanced Wastewater Treatment fund.

There are 1,500 connections contracted by the County to be completed, at \$2,100 each; the County will have \$3.15 million refunded directly. Another \$600 for each of the 1,500 connections will build a \$900,000 escrow account to fund Advanced Water Treatment (AWT) as required by the State by 2010. KWRU has committed to be AWT with its Stock Island Treatment Plant by Dec. 2006, 4-years ahead of the State deadline and in compliance with the contract with Monroe County, which requires AWT operations in January of 2007 (see sec. 5).

The AWT requirement has also triggered 750 additional cesspit credits for the benefit of the residents of Monroe County.

The County will not be relinquishing control of something it never owned (the vacuum pipe collection system installed in the ground). The County will be refunded the \$3.9 million payment provided to KWRU for the 1,500 EDU plant capacity.

The County did contract for and does own plant treatment capacity for 1,500 EDU's on South Stock Island.

In return, the Utility agreed to reserve treatment plant capacity at its treatment plant, for the treatment of 1,500 Equivalent Development Units (EDU's). However, analysis by the Grand Jury's consultant noted that only 860 EDU's could be serviced by the infrastructure included under the terms of this contract.

Three respected engineering firms, CH2M HILL, Weiler and URS have confirmed the ability of the Stock Island utility to connect 1,500 EDU's and the utility owner has stated on the record at public BOCC meetings that he will build the necessary capacity if and when that should ever be required. The amount of EDU's that the infrastructure portion could service under the contract is irrelevant, as the County purchased 1500 EDU's treatment capacity at the plant. It is important not to make an apples and oranges comparison when considering these two aspects of a wastewater system; plant capacity and infrastructure capacity.

Boyle Engineering, a contract engineering firm for the FKAA, is the only engineering firm to dispute the Stock Island wastewater system EDU capacity findings of CH2M Hill and URS, two of the County's wastewater engineering consulting firms and Weiler Engineering, the system design engineering company for KWRU.

Weiler and URS Engineering have both stated in writing for the public record that there is enough wastewater plant treatment system capacity to handle the 1,500 EDU wastewater needs of South Stock Island beyond a 20-year horizon.

During Grand Jury testimony by expert witnesses, it was stated by these witnesses independently, that it was unprecedented in their experiences to have a public project funded by the public monies turned over to a private entity such as KW Resort Utilities.

The County Commission agrees that using public funds to enrich a private party is an inappropriate use of public funds. The infrastructure for the South Stock Island project was always the property of the Utility as described in section F of the Capacity Reservation and Infrastructure Contract. The County purchased plant system capacity on an extremely favorable basis. This favorable purchase was passed along to the residents of South Stock Island.

Much to the chagrin of its detractors, the project is most favorable to the residents of Stock Island as a cost-effective alternative to other wastewater proposals including but not limited to a new FKAA or County owned system at considerably higher cost.

FINDING # 6 - Monroe County also entered into a separate contract with KW Resort Utilities on August 16, 2001. Under the terms of contract KW Resort Utilities agreed to provide central sewage collection services to the Jail and Detention Center and other public buildings on Stock Island.

The county has conveyed to the Utility at no charge the lift station serving the Detention Facility Treatment Plant and the lift station serving the Public Buildings and the sewer main from the lift station to the Detention Facility Treatment Plant. The County also contracted with the Utility to construct and convey ownership of an additional lift station to the existing sewer main serving the Detention Facility.

Conveyance of the wastewater pump stations and force mains associated with the Monroe County Detention Center to KW Resort Utilities was included as a condition of the contract at the request of Monroe County. Utilities, whether public or private like to operate the system in its entirety, including associated lift station systems. Historically, when a developer installs onsite utilities, these utilities are conveyed to the Utility at the completion of the project. Easements are obtained to allow the Utility access to what would otherwise be private property. The contract requirements involving the Detention Center infrastructure is appropriate and in the best interest of Monroe County taxpayers.

Although the infrastructure has never been fully conveyed, KWRU has been paying for operation and maintenance of the system at no cost to the County, including daily inspections, repairs and replacement of pumps and electrical components. KWRU has also assumed liability in the event of failure of the systems that may result in spills of sewage as a result of any failure beyond its control. As a courtesy, KWRU's Operation & Maintenance staff also monitors and records water levels and pressures on the fire protection system as required by the County's Fire Marshal on a daily basis at no cost to the County.

The infrastructure associated with the Monroe County Detention Center represents a liability rather than an asset. Operation, maintenance, repairs and replacements are on-going expenses that would be incurred by the County in addition to the normal monthly sewer bills were it not for KWRU's assumption of these responsibilities. KWRU has also relieved the County of liability for non-compliance with FDEP requirements associated with the system.

The annual savings to the County's Sheriff Department from the contract with KWRU is \$130,000 in available reuse water in addition to the annual operating expense of the system. The total annual savings to the County is \$275,000 annually in today's costs. That is a savings to the County of over \$2.75 million in the next 10-years.

The Utility wanted to connect the Detention Facility in order to have the use of additional gray water to use in irrigation of the golf course, it should be noted that the primary owner of the Utility also owns and operates the Key West Golf Course. Once again, it was noted that public properties and equipment were being conveyed to a private company.

KWRU makes grey water available to the detention facility for non-drinking water reuse as well as for the Key West Golf Course which is a public golf course. The County pays the Utility \$.40 per thousand gallons for grey water used at the detention center. The grey water reuse on the golf course saves the Biscayne Aquifer and preserves more of the well field allocation for residents of Monroe County, saving 88 million gallons a year of drinking water that can be used for purposes other than flushing the toilets at the detention center.

FINDING #7 - The County agreed to pay the Utility a capacity reservation fee in the amount of \$2,700 per equivalent residential Connection, (ERC). The initial reservation fee was \$1,225,800. Three equal payments of \$408,600 were made to the utility with the final payment made in April 2004.

Section 7a of the County's contract with the Utility states in part. "When the Utility begins substantial physical construction to expand the capacity of its' wastewater treat plant or to extend its wastewater collection infrastructure to serve additional areas in South Stock Island or other island, the escrow agent will release the funds to the Service Company in the following manner: the payments will be made monthly equal amount based on the expected completion date of the expansion as set forth in the Service Company's construction documents. Release of said funds shall be made by escrow agent upon presentation of construction invoices (including costs of real estate acquisition, purchase or installation of pipes and lift stations, and, professional services; provided that such costs are exclusively attributable to such expansion of capacity or extension of

collection infrastructure to be paid by the Service Company along with a statement from the Service Company describing the construction of which the invoices seek payment”.

At the request of the Monroe County Clerk of the Circuit Court, the County Internal Audit Department completed an audit of the contracts with KW Resort Utilities on March 19, 2004. The Grand Jury heard testimony from the Audit Department and performed a review and analysis of their Audit Report. While this report identified numerous findings; the Grand Jury was especially alarmed by two of the findings as described below:

1. KW Resort Utility did not have an escrow agent or escrow agreement for the capacity reservation fees paid by Monroe County for the Detention Center project of \$1,225,800 as required by the Contract. The funds were deposited by the County into an interest bearing account in Key West, Florida. Contrary to the requirements of the contract for review and approval of invoices by an escrow agent, the capacity reservation funds were withdrawn at the sole discretion of KW Resort Utilities.

To clarify for the reader, the Grand Jury is referencing the Utility Agreement dated August 16, 2001. The agreement referenced is limited to the Detention Center, Public Service Building, Bayshore Manor and the Animal Shelter, all agencies of Monroe County.

Funds used to pay for the capacity reservation for the South Stock Island project under the “Capacity Reservation and Infrastructure Contract” of July 31, 2002, are not subject to using an outside escrow agent as were the funds under the August 16, 2001 contract.

Release of funds was predicated upon “presentation of construction invoices (...) to be paid by Service Company”. The contract does not delegate the responsibility of payment approval nor require the review and approval of said invoices by the escrow agent.

The County Clerk, an elected State Constitutional Officer maintains control of public funds. It has been determined by the Grand Jury that the County Clerk acted diligently in all matters concerning the KWRU contract. The County Clerk, or his designee, performed the escrow services on behalf of the County.

A memo from County Attorney, Richard Collins dated January 07, 2004 to Danny Kolhage, Clerk of the Courts which in essence states there was no need for an escrow agent to be involved with the payment transaction. In effect, the County Clerk acts in the capacity of escrow agent for most County transaction.

The Grand Jury found that the actions of both the County Commission and County Officials were negligent in their control of public funds.

The County Clerk, an elected State Officer maintains control of public funds. It has been determined that the County Clerk acted diligently in all matters concerning the KWRU contract.

All funds received by the KWRU from the County were used pursuant to the contract.

The County Attorney offered an opinion that no funds needed to be handled by an independent escrow agent.

The County Commission strongly believes that sufficient checks and balances presently exist within Monroe County government to insure appropriate use of public funds and respectfully disagrees that the County Commission or County Officials were negligent with public funds.

The County Administrator's response to this finding was weak in that it suggested that an additional county employee be added to monitor such projects in the future. The Grand Jury disagrees and is of the opinion that the current organizational structure provides for

such oversight. Simply put, someone did not do their job, whether it be intentional or in error.

The County has employed a new Administrator. The new Administrator has requested 3-new positions that endorse the need stated by the former Administrator: a County Wastewater Engineer and two County Deputy Administrators. Those requests have been approved by the County Commission and the positions are being actively recruited.

2. The Audit found that the Utility had charged construction and legal fees totaling \$347,000 representing 9.9% of the construction value. The fees were paid to Smith, Hemmisch & Burke and Green Fairways, Inc., the providers of legal and construction administration. The auditor also found direct relationship between KW Resort Utility and these companies. Contrary to contract requirements, the Utility could not provide documentary evidence supporting the expenditures.

The contract does not contain requirements for documentation of administrative or legal fees. The typical overhead for a contractor averages 7.5% without legal fees, which vary from project to project. The contracts between KWRU, Green Fairways Inc. and Smith Hemmesch & Burke were provided to the County Clerks Office, prior to the first payment made by the Clerks Office. The Clerk made ten additional monthly payments pursuant to the contract.

KWRU does not dispute the fact that there exists a relationship between KWRU, Green Fairways Inc and Smith Hemmisch & Burke. It is irrelevant and there is nothing either illegal or improper concerning joint ownership among various entities involved in the contract.

The comment in the County Clerks audit concerning the business relationship between the entities has no bearing on the contractual relationship between the County and KWRU.

The Audit Department recommended to the Clerk's Finance Department that payment should be withheld from the application for payments at the time of the audit. The Clerk's Finance Department in turn did subtract \$308,483 payment #11. Based on information provided to the Grand Jury, the utility is currently contesting withholding of these funds. The Grand Jury found that the County Commission and County Officials were negligent and/or incompetent in their control of public funds. (Refer to Finding #1)

While it may be convenient for the Grand Jury to separate the functions of County government to applaud the actions of one and denigrate the other, the reader should be reminded that the very checks and balances used to identify these questioned payments, the Clerks office and the auditor, are the exact checks and balances supported and funded by the County Commission in accordance with State Statutes.

The Grand Jury would like to compliment the work of the County Clerk's Finance Department and Internal Audits Department for their hard work and tenacity in identifying and following up on the findings.

We want to thank the many citizens that appeared before the Grand Jury and gave personal testimony. It was very important and citizens should feel free to approach the Grand Jury and present their grievances.

On a similar note, we would like to comment that the County Administrator and Commission's responses to the findings were weak and lacked detail. The responses should have specific correct actions to resolve each specific issue, corrections actions to prevent recurrence along with a time table and appropriate verification.

III. GRAND JURY OBSERVATIONS:

OBSERVATION # 1 - Based upon testimony of the Grand Jury Consultant, Boyle

Engineering and the County's Consultant, URS, the Capacity Reservation and Infrastructure Contracts were lacking in both technical detail and performance standards.

This is not accurate. The contract exhibits and specifications with KWRU are in excess of a 350-page document. Furthermore, the collection system was built, the collection system operates as intended by the parties and the residents of Stock Island have the ability to connect at a reasonable cost.

The contract was developed using the Engineer Joint Contract Documents Committee forms, respected as the industry standard for engineering contracts and specifications.

Further, the contract form was reviewed prior to approval by the County Commission by both the County Attorney as well as the attorney for the Utility. The County Commission would like to comment that contracts are best reviewed by those trained in the law, attorneys retained by the client who are paid to keep the best interest of the public in mind and not wastewater engineers associated with the project.

OBSERVATION #2 - Based upon review of various documents and testimony of a County Official it was determined that the necessary Code Inspections (i.e. plumbing, electrical, etc.) were not performed as work progressed. The official noted that to the best of his recollection some inspection was done after the fact.

See response to Finding #1 above.

IV. RECOMMENDATIONS:

RECOMMENDATION #1 - The County Commission shall, prepare a detailed written response to each of the Grand Jury Findings and Observations. Each response should address the root cause, corrective actions taken to resolve the finding/observation,

corrective actions to prevent recurrence on future projects along with a detailed schedule for completion of these actions. The response shall be provided to the Grand Jury within 30 days of issuance of this report. The responses will be provided to the Grand Jury for review, approval and follow-up verification/investigation as necessary. These corrective actions should be fully implemented prior to issuance of any future sewer related project contracts.

The County Commission respectfully submits this response to clarify issues for the Grand Jury but also to educate the public on the various aspects of the Stock Island project.

RECOMMENDATION #2 - The County Commission should retain ownership of all sewer related infrastructure provided by public funds.

See response to Finding #6 above.

This recommendation will require the County to be responsible for ownership of wastewater systems constructed by FKAA or other entities using County funds. At this time, the position of FKAA's interest in such a relationship is not known. It should be noted that the County has funded millions of dollars to FKAA to pay for wastewater infrastructure projects throughout the County but the Grand Jury did not mention this ongoing situation or caution the County on the continuance of same.

RECOMMENDATION #3 - The County Clerks Internal Audit Department should perform a comprehensive audit at the completion of the Sewer Projects by KW Resort Utilities. The results of the audit shall be reported to the County Commission and Grand Jury.

The Stock Island sewer project was thoroughly audited by the County Clerk and independent engineering firm, both at great expense to the taxpayers and ratepayers of Monroe County.

The County Commission will seek direction from the County Clerk as to the completion of additional audits of the Utility.

RECOMMENDATION #4- The County Commission and Officials should make every effort to recover from KW Resort Utilities the \$147,500 paid to former commissioner John L. London which was in violation of the contract and County Ordinances.

See response to Finding #2 above.

RECOMMENDATION #5- The County Commission should appoint a volunteer civilian oversight committee. The committee would have unrestricted access to all contracts, financial and other related documentation on future sewer projects. The oversight committee would be independent of the County Commission and would report to the County Administrator and the Citizens of Monroe County. The committee should be made of up of citizens representing the full length of the County. Every effort should be made to assure that the volunteers have a varied experience base in engineering/construction, legal and accounting. The Grand Jury believes that this independent oversight committee can provide the necessary visibility and assurances to the public that the County is acting in the best interest of all citizens of Monroe County.

The County Commission is making a similar recommendation on April 20, 2005 to members of the FKAA to work jointly on upcoming wastewater projects. The County Commission respectfully declines to establish another advisory group limited to this subject matter. The County Commission is elected to perform these duties and the Commission does not wish to delegate or shirk its responsibility in this area or any other area affecting the residents of Monroe County.

The decision-making process of the County Commission is supported by the professional opinions of staff, the County Attorney, independent legal counsel, independent subject matter consultants as retained by the County Commission and members of the public. The County Commission is confident that this large group of specialists, all with vested interests in performing to the satisfaction of the Commission, can provide a high level of support and guidance now, and in the future to the residents of Monroe County.

The County Commission appreciates and supports the participation of all county residents to be informed of the decisions being considered by the County Commission as well as the input from the resident's of Monroe County. The members of the County Commission, charged with all of the responsibility by the State of Florida to meet wastewater standards by 2010, unfortunately have insufficient control to meet this aggressive level of mandatory compliance.

As a County Government we all can agree of the need to invest more in informing the public of the operations of their government to bring understanding and consensus to the decision-making process.

RECOMMENDATION # 6 - The County Commission should consider the development and implementation of quality management system such as ISO Q9001-2000 (ISO 9001) entitled 'Quality Management Systems Requirements'. The implementation of a quality management system within the various county departments and commission would enhance their effectiveness and would aid in the identity, linkage and management of the numerous complex activities of the county and future sewer projects.

ISO 9001-2000 specifies requirements for a quality management system where at organization needs to demonstrate its' ability to consistently provide the services and/or product that meets requirements of local, state and federal regulatory requirements and the needs of the public- The quality management system should as a minimum address

areas such organizational, interfaces; documentation including procedures necessary to ensure effective planning, operation and control of processes and document control to approve documents (i.e. drawings, plans, invoices, contracts, purchase orders etc.) including approval and use of the latest documents.

The County Commission recently retained a new County Administrator to manage the day-to-day activities of the County. The Administrator's employment contract required the approval of goals that the County was to achieve from November of 2005 to November of 2005.

The Administrator's goals, formerly approved by the County Commission, move the County forward with a number of management initiatives including, a comprehensive review of County operations, the formulation of a strategic plan for each division of the County government which includes exercises in benchmarking, process improvement, the writing of policies and procedures and increased/improved, regularly scheduled staff training.

Additionally, the Administrator has set a goal of achieving the Malcolm Baldrige Award, also known in Florida as the Governors Sterling Award. Receipt of this award is the accomplishment of management excellence within a fully accountable customer service oriented organization. The County Commission understands that this will be a multiyear undertaking with application for award status scheduled to occur in 2008. The processes involved with both of these undertakings require that each and every aspect of the organization be analyzed in accordance with the core responsibilities of the organization to seek improved outcomes and efficiencies. The County Commission expects the Administrator will be making recommendations to the Commission based upon the exercises involved with strategic planning and the award process outlined above.

The County Commission has faith in the new Administrator and the changes and programs he intends to implement and will continue to work with the

Administrator to improve upon and continue the services delivered to County residents.

This report was drafted by:

Thomas J. Willi, County Administrator

For review and consideration by the Monroe County Board of County Commissioners

Approved as to content:

Mayor Dixie Spehar